Supreme Court of the United States

OCTOBER TERM, 1962

No. 735

VINCENT J. BRADY,

Cross-Petitioner,

against

TRANS WORLD AIRLINES, INC.,

Respondent,

and

THE INTERNATIONAL ASSOCIATION OF MACHINISTS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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INTRODUCTION.

Your Cross-Petitioner is Vincent P. Brady (Brady), an individual and resident of Wilmington, Delaware, who submits this Cross-Petition for Writ of Certiorari to request a jury trial to prove common law damages.

Brady was caused by the International Association of Machinists (IAM) and Trans World Airlines, Inc. (TWA) to be unlawfully discharged from his employment as an airline mechanic with TWA at International Airport, Philadelphia, Pennsylvania, on May 8, 1956. Since then through twelve years of litigation, Brady has sought from the IAM and TWA reinstatement to his employment and membership in the IAM, lost wages, and common law damages suffered by him and his wife and caused by reason of the unlawful discharge.

The United States District Court for the District of Delaware and the United States Court of Appeals for the Third Circuit agreed that Brady had been unlawfully discharged in violation of the Railway Labor Act 45 USCA § 152 (Fourth) and (Eleventh).

However, neither court would agree (for different reasons) that Brady was entitled to prove before a jury his claim for common law damages resulting from the unlawful discharge.

After these twelve years of litigation, Brady, who is now 47 years old, finally has been granted reinstatement and $10,617.80 in lost wages for the period 1956-1966.

However, Brady has not been granted one penny for the suffering and legal expenses (which consumed his life savings) to which he has been subjected to secure that which should have been granted to him by the IAM and TWA twelve years ago (namely, reinstatement to this employment and to membership in the union) if the IAM had performed its statutory duty as bargaining agent to repre-

sent him fairly and in good faith, and if TWA had acted independently and not as a tool of the union.

Brady's case cries out for justice and consideration. Otherwise the very legislation designed to protect Brady's rights as an individual and as an employee will be used to destroy him. When the union and employer join in an unholy alliance against an individual employee, what chance does he have if the courts turn their back to him. Justice demands that Brady be given the right to a jury trial to prove the damages he and his wife have suffered.

SUMMARY OF PRIOR DECISIONS.

The official reports of the United States District Court for the District of Delaware, as well as the decision of the United States Court of Appeals for the Third Circuit, are as follows:

1. 156 F. Supp. 82 (1957)—hearing on the Motions of the IAM and TWA to Dismiss the Complaint for lack of jurisdiction.

2. 167 F. Supp. 469 (1958)—reargument on Federal jurisdiction and the Motions of the IAM and TWA for Summary Judgment.

3. 174 F. Supp. 360 (1959)—hearing on whether or not Brady's second amended Complaint states a cause of action.

4. 196 F. Supp. 504 (1961)—hearing on cross-motions for summary judgment and the motions of the IAM and TWA to strike Brady's demand for a jury trial.

5. 223 F. Supp. 361 (1963)—hearing on the question of liability.

6. 244 F. Supp. 820 (1965)—hearing on the damages that Brady could obtain.

The final order and judgment of the District Court and its accompanying opinion, entered September 6, 1966, are unreported. The judgment and the above listed opinions are set forth in full in the Petition for Certiorari filed by the IAM and TWA.

The final judgment of the United States District Court, per Wright, Chief Judge, held the IAM and TWA jointly liable for unlawfully causing Brady to be discharged from his employment in violation of the Railway Labor Act, 45 U. S. C. A. § 152, Eleventh (A) and § 152 Fourth, and ordered that Brady be reinstated to his employment with TWA and membership in good standing with the IAM, with restoration of all benefits. Damages in the amount of $10,617.80, representing lost wages for the period 1956-1966, were also awarded.

The IAM and TWA appealed the decision of the District Court, and Brady filed a cross-appeal requesting review of that portion of the decision which denied Brady trial by jury and the opportunity to prove and recover common law damages, including punitive damages, suffered by reason of hostile discrimination resulting in the unlawful discharge.

The United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court by denying the appeals of the IAM and TWA and the cross-appeal of Brady. A copy of the decision of the Court of Appeals for the Third Circuit and the Order filed August 13, 1968, are set forth in the IAM's Petition for Certiorari.

JURISDICTION OF THE UNITED STATES SUPREME COURT.

Brady seeks by this Cross-Petition review of that part of the judgment of the United States Court of Appeals for the Third Circuit, entered August 13, 1968, which denied him trial by jury to prove common law damages.

Brady's Cross-Petition for review is submitted under the authority of Title 28 USCA § 1254(1), which provides for discretionary review by the United States Supreme Court of decisions of the United States Court of Appeals by Writ of Certiorari.

QUESTION PRESENTED.

Must Brady, a former employee of TWA and member of the IAM, who was unlawfully discharged from that employment in violation of the Railway Labor Act because of alleged and proven hostile and bad faith discrimination practiced upon him by the IAM and TWA exhaust internal union appellate remedies which were never made available to him by the IAM before he has a right to a jury trial in a Federal Court with Federal Question Jurisdiction to recover from the IAM and TWA common law damages which directly resulted from the unlawful discharge.

STATUTES INVOLVED.

The statutes involved are § 2 (Fourth) and § 2 (Eleventh) of the Railway Labor Act (45 USCA § 152 (Fourth) and § 152 (Eleventh)). These statutory provisions are set forth in full below:

> "*Fourth.* Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free

transportion to its employees while engaged in the business of a labor organization."

"*Eleventh.* Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) To make agreements, requiring, as conditions of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership."

FEDERAL JURISDICTION.

Federal question jurisdiction exists under and by virtue of the alleged and proven hostile discrimination practiced against Brady by the IAM and TWA resulting in his discharge in violation of the Railway Labor Act, 45 USCA § 152 (Fourth) and § 152 (Eleventh).

STATEMENT OF CASE.

Vincent P. Brady is a resident of Wilmington, Delaware, is married, has one child, and is 47 years old.

He was employed by TWA from 1951 through his discharge on May 8, 1956. He was a line mechanic, a member of local lodge 1776 of the IAM, and a shop steward. He is presently employed by Boeing Vertol.

The IAM branded Brady as a trouble maker and, through bad faith discriminatory practices, effectively caused his discharge from his employment with TWA while he was a member in good standing with the union and TWA, and then justified the discharge action before the Airline Systems Board of Adjustment by intentionally misrepresenting certain essential facts that would have established Brady's good standing with the IAM and his right to his job with TWA.

The IAM asserted that Brady was discharged because he failed to pay dues and thus maintain membership in the Union in good standing, citing the Union Security Provision of the TWA-IAM Labor Agreement, Article XXVI, Section (A), and the automatic cancellation provision of Article E, Sec. 14 of the IAM Constitution. Both the United States District Court and United States Court of Appeals disagreed.

Article XXVI(a) of the TWA-IAM Labor Agreement provided as follows:

> "(A) Each employee now or hereafter employed in any work covered by this Agreement shall, as a condition of continued employment in such work, within sixty (60) days following the beginning of such employment or the effective date of this Article, whichever is later, become a member of, and thereafter maintain membership in good standing (As herein defined), in the Union, except as provided otherwise herein. Such condition shall not apply with respect to any employee to whom

such membership is not available upon the same terms and conditions as are generally applicable to any other member of his classification (and at his point on the Company's system), or with respect to any employee to tender the dues uniformly required of other members of his classification (and at his point on the Company's system) as a condition of acquiring or retaining membership.

"For the purpose of this Article, '*membership in good standing in the Union' shall consist of the payment by the employee of dues for each calendar month, no later than the last day of the following calendar month,* which are uniformly required of members of his classification (and at his point on the Company's system) as a condition of acquiring or retaining membership." (Emphasis added.)

The automatic cancellation provision of the IAM constitution, Article E., Sec. 14, provided as follows:

"Sec. 14. Delinquency for 3 months in the payment of dues or assessments shall automatically cancel membership and all rights, privileges and benefits incident thereto. The period of good standing membership of members whose membership has been cancelled for delinquency, or other cause shall date from their last reinstatement, as shown by the G. L. records, and their rights, privileges and benefits under the provisions of this Constitution shall attach and date from their last reinstatement, as though they had never before held membership in the IAM."

Brady, when discharged, was only two months in arrears in paying dues—and the lower courts so held.[1]

1. *Brady v. TWA and IAM,* 223 F. Supp. 361 (1963); *Brady v. TWA and IAM,* — F. 2d — (3rd Cir. 1968).

Brady had paid dues through November, 1955 and, in response to a demand from Clifford Miller, General Chairman, District 142, IAM, that dues be paid by March 28, 1956 (Exhibit P-3), he tendered a check for $10.50 (Exhibit P-5), together with his dues book, to Gerald C. Coleman, Financial Secretary of Local 1776 of the IAM, on March 27, 1956. This was four days before a three month delinquency would occur.[2]

The IAM dues rate at the time Brady tendered his check for $10.50, according to the IAM, was $3.25 per month for Brady's classification and his March 27, 1956 tender of $10.50 was more than sufficient, under Article XXVI (a), to cover dues through February, 1956.[3] Therefore, Brady, by his March 27, 1956 tender had maintained his membership in the IAM in good standing.

However, the IAM rejected Brady's March 28, 1956 tender of $10.50 and instead demanded $34.75 (Exhibit P-4), representing dues for three months ($9.75), which Brady had already tendered, and a reinstatement fee ($25.00).[4] Thus, the IAM although first demanding that dues alone be paid by March 28, 1956, and receiving more than sufficient monies to cover the dues arrearage by that date, arbitrarily rejected Brady's dues payment and demanded the same amount of dues that had been paid, plus a $25.00 reinstatement fee. The IAM justified its reversal on the theory that Brady, on March 1, 1956, was three months in arrears (December, January, and February) and was

2. Under Article XXVI(a) of the TWA-IAM agreement, December 1955 dues were payable by January 31, 1956, January 1956 dues by February 28, and February dues by March 31, 1956.

3. According to Brady the dues of Local 1776 had been raised from $3.00 to $3.50 per month for all classifications (Exhibit P-63), which was why Brady tendered $10.50.

4. The reinstatement fee for Local 1776 was $20.00, not $25.00. Therefore, Brady was charged an excessive reinstatement fee as well as excessive dues.

subject to automatic cancellation under Article E, Sec. 14 of the IAM Constitution.

The lower courts found that Brady was in fact only two months behind in paying dues when he was cited for discharge and that he was therefore not subject to the automatic cancellation provision of the IAM Constitution. Accordingly, his discharge was for reasons other than nonpayment of dues, and was in violation of the Railway Labor Act, 2 (Eleventh), and 2 (Fourth).

Neither the District Court nor the Court of Appeals ruled on Brady's claim that he was discriminated against by the IAM and TWA.

The District Court felt it did not have to because Brady's recovery was limited to reinstatement and lost wages whether the violation involved 2(4), 2(11) or hostile discrimination.[5]

The Court of Appeals ruled that Brady did not exhaust internal union remedies; therefore, he did not qualify to make a claim for common law damages which conceivably would otherwise be available on the hostile discrimination claim.[6]

Brady submits that he was discriminated against by the IAM, that same was in bad faith, that TWA participated in this discrimination, and, because of the existence of hostile discrimination causing his discharge from TWA, Brady does not have to exhaust internal union remedies as a condition precedent to making a claim for common law damages in the Federal Court—especially where the internal union remedies were never made available to him.

The following review of the circumstances which occurred prior and subsequent to his discharge establishes

5. *Brady v. TWA and IAM,* 196 F. Supp. 504 (1961); *Brady v. TWA and IAM,* 223 F. Supp. 361 (1963).

6. *Brady v. TWA and IAM,* — F. 2d — (1968).

that Brady was subjected to discrimination by the IAM (in which TWA acquiesced) which was intentional, malicious and in bad faith.

The discrimination was precipitated by a dispute that existed between Brady and the IAM over Union procedure in raising the monthly dues payable by members in Local 1776.

In October of 1955, the IAM instituted a movement to raise dues of its membership in Local 1776 from $3.00 per month to $3.25 per month. This movement culminated at a meeting of the membership held November 2, 1955 when, after three separate votes, the Union was successful in obtaining a bare majority to push through a dues increase of 50¢ for all classifications. The successful vote was 14 to 12 (Exhibit P-24 and 25).

Many members of the Union were disappointed with the vote, not because of the amount of the increase nor the fact that the dues were raised, but because they did not receive sufficient notice of the time and place of the meeting. Consequently, many members of the Union did not have the opportunity to vote (N. T. 22-31).

These disgruntled employees approached Brady, who at that time was a shop steward, and asked for his assistance, which he agreed to give them. At the next meeting of the membership held in December of 1955, Brady and others challenged the legality of the dues increase. The IAM attempted to table Brady's protest and the IAM was rejected by a vote of 7 to 3 (Exhibit P-26).

Brady then moved that the dues increase be rescinded and that it be brought before the next general membership meeting and voted upon after posting due notice of the intent and purpose of the meeting. The IAM refused to consider Brady's motion which had been seconded, and Brady challenged the chair. The membership then voted 14 to 3 to accept B ady's challenge and motion (Exhibit P-26).

The IAM did not post notices as demanded by the vote of the membership, nor did they hold a general membership meeting during the following month of January (N. T. 26). The only meeting held was a special meeting, called by the Union, but no mention was made of the motions made by Brady or the dues question (N. T. 26, 27).

Brady, on February 9, 1956, took it upon himself to protest the action of the Local by writing to A. J. Hayes, International President, E. Peterson, another officer of the International, and also other local lodges in the area (Exhibit P-63).

The answer that Brady received from the International sent by Hayes and by Peterson did not satisfy him, and from that day on, until March 27, 1956, Brady refused to tender dues at the new rate to protest the procedure used by the Union in raising the dues.

Brady, however, on numerous occasions, did tender dues at the old $3.00 rate, which tenders were always refused by the Financial Secretary, Gerald C. Coleman (N. T. 233, 234).

On February 15, 1956, approximately one week after Brady wrote his letter to the International President of the IAM, to object to the procedures used by the IAM in raising dues, Coleman, the financial secretary of the Local, posted Brady's name with others as being two or more months behind in dues, and gave them 10 days to pay or be subject to discharge (Exhibit P-6). Brady, at that time, was only one month in arrears.

Brady refused to pay dues at the new rate, although he did tender dues at the $3.00 rate, within the ten-day period prescribed, and, on March 3, 1956, Coleman cited his name to the Assistant General Chairman of District 142, of which Local Lodge 1776 was a part, for discharge action (Exhibit P-9).

Brady was the only employee from this Local ever cited for discharge by Coleman (N. T. 227, 228). In fact, Coleman permitted members to get five months behind, and in one case seven months (N. T. 223), without taking any action against them. Even after Brady was cited, Coleman permitted other employees to get three and five months behind in the payment of dues, and never cited these employees for discharge (N. T. 207-219).[7]

The IAM, upon receipt of Coleman's March 3, 1956 citation, sent Brady on March 13, 1956, a demand notice to pay four months' dues on or before March 28, 1956, or be discharged from his employment (Exhibit P-3). It was in response to this letter that Brady, on March 27, 1956, capitulated in his opposition to the dues increase and tendered his check for $10.50, and his dues book, to Coleman, which was more than sufficient to maintain his membership in good standing (N. T. 41-42, 242).

It was then that Coleman, for the first time, on instructions from Miller, demanded payment of a reinstatement fee

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7. CHART SUMMARIZING EMPLOYEES' DUES DELINQUENCIES

Date Paid	*Name*	*Notes of Testimony* Page*	*Months Delinquent*	*Months Not Paid*
2/20/56	Barbehan	207	4	
1/20/56	Applegate	209	4	
8/31/56	Brown	210	4	
6/31/56	Connelly	210-211	4	2
8/31/56	Fimple	211	7	5
2/20/56	McClosky	211	4	1
1/20/56	Wozniak	212	4	1
4/ 7/56	Wozniak	212	3	
12/31/56	Wozniak	212	9	2
6/31/56	DeBacco	213	5	2
8/31/56	Johnson	213	7	2
6/31/56	Malloy	213	5	2

* Hearing held August 27, 1962.

as well as dues. Coleman wrote to Brady, returning his check for $10.50 as well as his dues book, informing him that his tender did not cover *dues and a reinstatement fee.* Coleman's letter demanded three months' dues, which Brady had already paid plus a reinstatement fee of $25.00 by April 4, 1956—thus Brady's union membership had been cancelled, even though a proper tender had been made, and he was given but seven days to pay *or be discharged* (Exhibit P-4).

Brady absolutely refused to tender a reinstatement fee, and justifiably so, as, under the IAM Constitution, he would lose the ten years seniority that he had accumulated with TWA as an aircraft mechanic.[8]

Brady, because of his tender, did not feel that he was delinquent in dues, and appealed in person both to representatives of the IAM and TWA. He sent a telegram to Miller and TWA asking for assistance in interpreting the union security provisions of the Labor Agreement, but received no help (N. T. 47). In fact, even though Brady was asking for help, Miller caused his discharge on April 5, 1956.

On April 3, 1956, one day before the April 4, 1956 deadline, Brady, fearing loss of his job, and justifiably so, filed his first appeal to the TWA-IAM Systems Board of Adjustment.[9]

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8. "Sec. 14. Delinquency for 3 months in the payment of dues or assessments shall automatically cancel membership and all rights, privileges and benefits incident thereto. The period of good standing membership of members whose membership has been cancelled for delinquency, or other cause shall date from their last reinstatement, as shown by the G. L. records, and their rights, privileges and benefits under the provisions of this Constitution shall attach and date from their last reinstatement, as though they had never before held membership in the I. A. M."

9. Brady's April 3, 1956, appeal to the Systems Board is missing from the record submitted to this Court. It is set forth below.

"Dear Sirs and Brothers:

I am in receipt of a registered letter dated March 28th, from Gerald C. Coleman, Financial Secretary of Lodge #1776.

Miller, upon learning of Brady's first appeal, began to assemble the evidence he would need to support his discharge action against Brady and asked Coleman to give him a written summary of his contact with Brady. Miller, after reviewing the information sent to him by Coleman (Exhibit P-11), realized that he would not be able to justify his discharge action because Brady had been asked to pay dues and a reinstatement fee. Miller knew that if he accepted dues, Brady would be a member in good standing under Article XXVI E, Sec. 14 of the IAM constitution.

Miller then cancelled his first discharge action and wrote Brady on April 11, 1956, to demand that a reinstatement fee be paid by April 26, 1956, or he would be discharged (Exhibit P-14).

Brady wrote to Miller on April 18, 1956, to request that he be permitted to pay dues rather than reinstatement fee, but Miller refused (Exhibit P-19). It was then that Brady filed his second appeal to the Systems Board of Adjustment in an effort to save his job (Exhibit D-3). He knew if he

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I have also received a registered letter dated March 13th, from Cliff Miller, General Chairman, District 142. Both letters are related to the same subject, payment of dues and the union security clause of the contract.

This is to inform you that on numerous occasions I have tried to pay my union dues to the financial Secretary but he refused to accept them. I believe I have fulfilled my obligation under the contract, therefore, I appeal the decision to have me discharged, to the Systems Board of Adjustment, providing that such an appeal does not jeopardize my right to appeal outside the Systems Board of Adjustment should I see fit to carry the action further.

Enclosed find a copy of letter wrote by me and dated February 9th, 1956 explaining events about the dues issue.

Should you need any further information or material I should be glad to present it to the Board.

Fraternally yours,
Vincent P. Brady"

did not appeal, the discharge action would be final and he would forfeit his job under the TWA-IAM Labor Agreement, Article XXVI (f).[10]

Brady's second appeal was rejected by the Systems Board of Adjustment because it was premature (Exhibit P-69). Thereafter, he submitted a third appeal.

In all his appeals he informed the Systems Board that he had paid his dues and was a member in good standing. However, the Board ruled against him as a result of the testimony introduced by Miller at the May 4 and May 14th hearings which Brady did not attend because they were in Kansas City, Missouri.

A review of the transcript of these hearings establishes that essential facts as presented by Miller, who was bound by law to represent Brady fairly, were grossly misrepresented to secure Brady's discharge (Exhibits P-1 and P-2).

For instance, Miller misrepresented to the Board that Brady on March 27, 1956, had tendered three months' dues at the rate of $3.00 per month, which was the old rate, whereas Brady had tendered $10.50, more than enough to cover dues at the new rate. Miller had been informed by Coleman that Brady had tendered dues (Exhibit P-11), and also the amount of the tender (N. T. 257).

Miller told the Systems Board that Brady had been informed prior to March 27, 1956, that he owed a reinstatement fee, whereas Brady had been told that payment of dues would be sufficient (Exhibit P-3) (N. T. 51).

Miller told the Systems Board that he had instructed Coleman to give Brady until April 4, 1956, to pay dues, whereas Coleman immediately after talking to Miller wrote

10. "(f) . . . In the event no protest [of discharge action] is filed within the above time limits [three days] the action will be considered as proper and will be final and binding upon all parties concerned."

two letters to Brady demanding both dues and a reinstatement fee (Exhibit P-4). In fact Coleman's letter said the IAM was rejecting the dues tendered by Brady on March 27, 1956, because it did not include a reinstatement fee.

Lastly, when Miller read Coleman's March 28, 1956, letter to the Systems Board, the copy used did not contain the amount that Brady had tendered—$10.50, the most destructive evidence against discharge Miller had to face, as it would have established Brady was in good standing with the Union.[11]

When C. F. Woodling, Labor Relations Representative of TWA, questioned Miller about the provisions of the Union Security clause, Article XXVI(a), namely that dues for one month were not required until the end of the following month, Miller referred to the automatic cancellation provision of the IAM constitution, Article E, Sec. 14, arguing that Article XXVI(a) did not apply, as Brady failed to pay his dues by March 28, 1956, and became subject to automatic cancellation under the IAM Constitution; therefore, was subject to discharge (Exhibit P-1).

Thus Miller, to obtain Brady's discharge, led the Board to believe that Brady had never paid the dues required under Article XXVI(a). With this testimony before them, the Systems Board affirmed Brady's discharge.

Brady, when notified that the Systems Board confirmed his discharge, had his counsel write to the IAM and TWA on June 7, 1956, explaining that Brady had paid dues, and request reinstatement (Exhibit P-76). Brady's request was refused.[12]

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11. Compare the letter Coleman sent to Brady, dated March 28, 1956 (Exhibit P-4), with the letter Miller quoted to the Systems Board (Exhibit P-13).

12. Brady had sent a telegram to Miller on May 17, 1956, "Have compiied with contract. Provisions for appeal. Do I have any recourse under the Constitution before civil action." Miller answered on May 18, 1956, that Systems Board decision was final.

Brady then secured the notes of testimony of the two hearings from the Systems Board, and, for the first time, learned of the discrimination practiced against him by the IAM. He immediately wrote to D. W. Harris, V. P. Industrial Relations, TWA, to point out the misstatements made by Miller (Exhibit P-68), but TWA replied that the SBA decision was final. Exhibit P-68 is missing from the court records; therefore, it is set forth in full below.[13]

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13. October 18, 1956, letter

"To: D. W. Harris
Vice President
Industrial Relations

Dear Sir:

I am writing to you concerning the matter of my discharge from T. W. A. under the union security provision of the contract.

Your letter of May 1st informed me that I was to be discharged at the close of work May 8, 1956. I appealed to the system board of adjustment on receipt of your notice. The board met & upheld the decision for discharge & notified me of that decision. It was, Mr. O. L. Koontz, Vice chairman & union member of the board who notified me that I was discharged & not yourself or any other T. W. A. officer who has the sole authority to do the discharge. My forman has informed that he didn't discharge me but a union member Mr. O. L. Koontz did. Is this proper procedure under law & contract? If it is not, I would like to be reinstated with all back pay & privileges that were mine before & since discharge including the overtime lost.

I would also like to bring to your attention a few discrepancies noticed reading thru the record of my hearings. I would like to bring them to the members of the board for reconsideration.

First, In my appeal I asked that all correspondence between affected parties be introduced on my behalf. Reading thru the record I see no mention of my Feb 9th letter to A. J. Hayes & a few lodges. I consider it very important that the members read that letter & that it be made a part of the record of the hearings.

Second, I asked that the minutes of Lodge 1776 be presented at the hearing. I understand they weren't available. The recording secretary claims he mailed carbon copies of them to the District. Why weren't they introduced on my behalf?

Third, I received my first notice from the district dated March 13, 1956 and I quote in Part, 'This letter is to inform you that you must become a good standing member, including payment of dues for the month of March 1956, in the union before midnight, March 28, 1956 or you will be discharged within the week following March 28, 1956.

Prior to March 28th, 1956 I sent my registered mail a check for $10.50. It was to cover three months dues at $3.50 a month. Actually it should have been $9.75 @ 3.25 a month for mechanics. I was under the impression it was a 50¢ raise for all classifications. Instead it's 50¢ for classifications below mechanics & 25¢ for mechanics. Mr. Gerald C. Coleman financial secretary of lodge 1776 received & acknowledged receipt of my check in the allotted time. Enclosed find a carbon copy Mr. Coleman sent me on March 28th.

Take the record of system boards hearing for May 14th, 1956 & turn to page 9 Reading the second paragraph & I quote, 'Just prior to midnight on March 28th, the established deadline for, Mr. Brady, making payment of his union dues, the financial secretary of Lodge 1776 received a check from Mr. Brady making payment of three months due at the rate of $3.00 a month rather than at the rate of $3.25." Unquote'

That sir is *not true* as the record shows & I can prove. I did pay my dues at the new increase rate before March 28th the deadline.

Reading all of page 9 and page 10 & 11 of May 14, 1956 notes of testimony Mr. Miller did not present to the system board the full contents of Mr. Colemans letter to me. I quote the missing part 'I have taken this action as a result of instructions from Mr. Cliff Miller, District 142 Gen. chairman' unquote. How does that strike you sense of fairness? Also remember that nothing was said about a reinstatement fee prior to the March 28th deadline. It was allways dues They never specified between dues & reinstatement till later.

Mr. Harris I believe I am morally & Legally right on this issue I intend to follow it to a conclusion, if need be, in the courts of the U S It may mean subpoena of records & men. I hope to bypass all of the notoriety if I can this where I hope youll be of some help with other members of the board.

Thanking you for your kind consideration, I remain

Sincerely Yours,

Vincent P. Brady
501 Calhoun Rd.
Bellevue Hills
Wil-Del"

On February 4, 1957, Brady again wrote to the IAM and each member of the Systems Board to request a rehearing, pointing out the misrepresentations (Exhibit P-75). He received a perfunctory reply that the Board decision was final and binding and there was no other recourse (Exhibit P-8). So he started suit.

After trial, the District Court found that Brady was discharged unlawfully and in violation of the Railway Labor Act, 45 USCA § 152 (Eleventh) and (Fourth) and, consequently, granted Brady reinstatement to the IAM and TWA with all benefits, and $10,617.80 damages for lost wages. However, the District Court denied Brady trial by jury on his claim to common law damages caused by the unlawful discharge.

The United States Court of Appeals for the Third Circuit affirmed the District Court decision by its opinion filed August 13, 1968.

Brady submits that the District Court and the Court of Appeals erred in denying Brady the right to recover common law damages from the IAM and TWA because of hostile and bad faith discrimination practiced upon him by the IAM, and in which TWA participated, causing his discharge.

ARGUMENT.

Brady respectfully submits that this Petition for Writ of Certiorari should be granted for the following reasons:

The ruling of the Court of Appeals for the Third Circuit that Brady, discharged from TWA in violation of the Railway Labor Act as a result of hostile discrimination, must exhaust internal union remedies before he can recover common law damages from the IAM and TWA is in direct conflict with decisions of the Fifth and Second Circuits.[14]

The United States Court of Appeals for the Third Circuit by its ruling on the question presented has decided an important question of Federal law which has not been, but should be, settled by this Court.

The United States Court of Appeals for the Third Circuit in its opinion filed August 13, 1968, stated in denying Brady's claim to common law damages:

> "It is conceivable that an award of damages by a Court against a union for hostile discrimination could supplement the relief available for a violation of § 2 (Fourth) (Eleventh). However, in this case, Mr. Brady's claim for such damages may not be sustained because of his failure to exhaust internal union remedies or to adequately explain that failure."

The Court based its reasoning for the above finding on the fact that Brady's second claim, alleging hostile discrimination, was directed only at the IAM, and not TWA. Therefore, the Court reasoned:

> "Such a claim involves the union-member relationship and not the employer-employee relationship."

Brady would agree with the court's reasoning if his membership in the IAM only had been cancelled and he

14. *Richardson v. Texas and New Orleans R. Co.*, 242 F. 2d 230 (5th Cir. 1957); *Cunningham v. Erie R. Co.*, 358 F. 2d 640 (2d Cir. 1966).

had been given the opportunity to exhaust administrative remedies. However, this was not the case. Brady's membership was cancelled on March 28, 1956, and he was given until April 4, 1956, to pay dues and a reinstatement fee (which would have meant loss of seniority) *or be discharged.* Brady appealed to the Systems Board on April 3, 1956, to explain that he had paid his dues, but to no avail, as he was discharged on April 9, 1956.

Although the April 9 discharge was cancelled by the IAM and Brady given until April 28, 1956, to pay a reinstatement fee, he was never advised that his remedy was to appeal to the higher levels of the IAM. On the contrary, he was constantly advised that he would be discharged if he did not pay a reinstatement fee and that his only recourse was to appeal to the Systems Board of Adjustment. Even Brady's request of April 18, 1956 (Exhibit P-19), that he be able to retender dues was rejected (Exhibit D-2).

The first notice Brady received was Miller's letter dated March 13, 1956, demanding dues by March 28, 1956, *or be discharged under the provisions of the TWA-IAM Bargaining Agreement* (Exhibit P-3).

The second notice Brady received was Coleman's March 28, 1956, letter demanding dues *and* a reinstatement fee by April 4, 1956 or be discharged (Exhibit P-4).

The third notice he received was Miller's April 11, 1956, letter demanding a reinstatement fee by April 26, 1956, or be discharged. Also, in this letter, Miller advised Brady that his remedy if he did not pay would be to appeal to the Systems Board (Exhibit P-4).

Brady was never given the opportunity to appeal his cancellation of union membership to the higher levels of the IAM. The March 13, 1956, letter gave him 15 days to pay or be discharged. The March 28 letter gave him seven days or be discharged. And the April 11, 1956, letter gave him 15 days or be discharged.

Not once was he informed that his membership had been cancelled and under the IAM Constitution he had 30 days to appeal to the International President (Exhibit P-7).[15]

Brady was discharged from his employment with TWA, as threatened, and the discharge was caused solely by reason of the hostile and bad faith discriminatory treatment accorded him by the IAM, and TWA is by law jointly responsible.[16]

When the IAM demanded Brady's discharge, and TWA acted pursuant to those demands, the matter no longer involved only the union-membership relationship. It was then a discharge case, and the IAM-TWA Bargaining Agreement controlled, not the IAM Constitution.[17]

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15. Sec. 9. Appeals may be taken from the decision of any L. L. or G. L. officer to the I. P., provided, however, that such appeals must be taken within 30 days after the decision. Thereafter appeals may be prosecuted in accordance with the provisions of Sec. 6, Art. XXIV.

16. *Cunningham v. Erie R. Co.*, 358 F. 2d 640, 645 (2nd Cir. 1966).

17. *Brady v. TWA and IAM*, 223 F. Supp. 361 (1963), in which Judge Wright stated: "In any event, the doctrine of exhaustion of internal union remedies is entirely inapplicable in situations, as here, which do not involve internal union problems. Under the Railway Labor Act, IAM is entirely free to reject Brady's tender of dues and even to expel him. It may do all of these things because they involve the union-member relationship and the Act leaves that untouched. But when the Union strikes at the employment relationship and has an employee discharged, that is a different matter. At that point, it ceases to be a solely internal union problem, if for no other reason, because the employer is now involved. Nor is there anything whatsoever in the statutory language or legislative history supporting the IAM's contention. The Taft-Hartley analogy—which Congress explicitly had in mind when it drafted 2 (Eleventh)—is again appropriate. No one has even suggested, much less held as as a matter of law, that an employee illegally discharged under a union security agreement, must exhaust internal union remedies before applying to the National Labor Relations Board for relief under Section 8(a)(3). Policies, such as the exhaustion doctrine, designed to give private organizations principal responsibiltiy for governing their internal affairs are, therefore, wholly inapposite in situations involving federal regulations of the employment relationship." (Citations omitted.)

For instance, under the IAM-TWA bargaining agreement, an employee who is discharged must protest that discharge to the Airline Systems Board of Adjustment within three days or forever waive the right to contest the discharge action. Therefore, since a discharge situation was involved, Brady was bound to follow the appellate procedures called for in the IAM-TWA bargaining agreement (Exhibit P-6).[18]

If Brady had not appealed his discharge to the Systems Board of Adjustment, but instead followed the appellate procedures specified in the IAM Constitution, he would have been forever barred from contesting the discharge action, and the IAM and TWA would have so argued.

Accordingly, if the reasoning of the United States Court of Appeals is followed, an employee must have the wisdom of Solomon to make the right decision to preserve all rights that would otherwise be available to him when unlawfully discharged.

According to the Court, Brady should have known to appeal his discharge both to the higher levels of the IAM and to the Systems Board, even though he was advised by the IAM that his remedy was to appeal to the Systems Board (Exhibit P-14).

Brady filed three appeals to the Systems Board. He appealed to Harris, V. P. Industrial Relations, TWA, to point out the misstatements of fact which the IAM had made to the Systems Board to secure his discharge (Exhibit P-68).[19]

Brady also wrote each member of the Systems Board, sending a copy to A. J. Hayes, International President of the IAM, to point out the misstatements upon which the Board relied in affirming his discharge (Exhibit P-75). The

18. Article XXVI (f) (page 64) of the TWA-IAM Bargaining Agreement.

19. See footnote 13, *supra*.

Systems Board replied to Brady that their decision was final and binding (Exhibit P-8). The copy of the letter sent to Hayes, the International President, sent certified mail, was returned unaccepted and unopened.

We submit that it would have been a futile act and totally unreasonable to require Brady after his discharge to pursue further internal union appellate procedures to contest his discharge.

Brady's only recourse was to the Federal Courts to obtain full relief, i.e., reinstatement, lost wages and common law damages that could be proven as being caused by the hostile discrimination practiced against him to secure his discharge.

The Federal Court, by reason of the unlawful discharge caused by the hostile discrimination had jurisdiction,[20] and once jurisdiction vested in the Federal Court, it had the power to decide all questions before it and grant both equitable and legal relief.[21]

However, to date, the Courts have refused Brady his day in Court to prove the damages he has suffered. And why? Because common law damages have never before been allowed in the union security discharge situation. The courts have expressed approval of such things,[22] but none have gone so far as to grant them.

There never has been a more compelling case for granting the relief requested than the one Brady presents

20. *Steele v. Louisville & Nashville R. R.*, 1944, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; *Brotherhood of Railroad Trainmen v. Howard;* 1952, 343 U. S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283; *Conley v. Gibson,* 1957, 355 U. S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80.

21. *Hurn v. Oursler,* 289 U. S. 238 (1933).

22. *Richardson v. Texas and New Orleans RR.*, 242 F. 2d 230 (5th Cir. 1957); *Nobile v. W. B. Woodward,* 200 F. Supp. 785 (Ed. Pa. 1962).

to this Court. Justice demands it. The IAM would not be swayed from their unlawful purpose to get rid of Brady at any cost, and TWA could have cared less, as they are completely indemnified by the IAM from loss. But for the unlawful discrimination and TWA's total indifference to Brady's plight, Brady would have been saved 12 years of litigation and the suffering, worry and expenses that accompany major litigation.

And there was discrimination and it was malicious and in bad faith. Why else would the IAM single out Brady, who was not even delinquent in paying dues, and cite him for discharge, when no other employee from Brady's local had ever been cited, or was cited subsequently, for discharge, although other employees became as much as seven months delinquent?

Why else would the IAM refuse a valid tender of dues within the time *they* specified, and then proceed to cancel his membership in the union and have him discharged?

Why else would the IAM refuse Brady one more chance in April, 1956 (after his first discharge was cancelled), when he explained to them that he had tendered his dues and would be willing to tender again?

Why else would the IAM intentially misstate essential facts to the Systems Board, facts which would have saved Brady's job if presented fairly and in good faith?

Why else would both the IAM and TWA totally ignore the appeals of Brady and his lawyer for reconsideration, after both the IAM and TWA knew what had taken place?

Brady should be given the right to a jury trial to prove common law damages caused by the malicious and bad faith discrimination practiced against him by the IAM, and in which TWA acquiesced.

The cases and authorities cited by the Court of Appeals in its opinion should not bar Brady's requested relief, as

not one of those cases involved the union security discharge situation.[23]

On the other hand, this Court (although the factual circumstances did not involve a union security discharge) has granted common law damages including punitive damages, against a union where its unlawful acts caused substantial harm.[24]

Wherefore, Brady respectfully requests that the United States Supreme Court grant Certiorari to review that part of the decision of the United States Court of Appeals for the Third Circuit, which denied Brady trial by jury on his claim to common law damages.

Respectfully submitted,

FRANCIS L. WHITE, JR.,
DUANE, MORRIS & HECKSCHER,
Of Counsel.

MORRIS DUANE,
Counsel for Cross-Petitioner Vincent P. Brady.

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23. *Gainey v. Brotherhood of Railway & Steamship Clerks,* 275 F. 2d 342 (3rd Cir.), cert. denied, 363 U. S. 811 (1960) and 313 F. 2d 318 (3 Cir. 1963), involved a question of whether or not the union had taken the necessary steps to compel the employer to abide by the terms of an agreement; *Foy v. Norfolk & W. Ry.,* 377 F. 2d 243 (4th Cir. 1967), involved a suit by an employee against the union and employer asserting that he was not promoted because of discriminatory practices on the part of the union; *Neal v. Systems Board of Adjustment,* 348 F. 2d 722 (8 Cir. 1965), involved a suit by employees accusing the union of discrimination in developing seniority classifications on a new job; and, *Detroy v. American Guild of Variety Artists,* 286 F. 2d 275 (2 Cir.), cert. denied, 336 U. S. 929 (1961) involved a suit by plaintiff against the union to have his name removed from a "National Unfair List".

In addition, the proviso contained in the Bill of Rights of Members of Labor Organizations, 29 USC § 411(a)(4) cited by the Court of Appeals was not enacted until 1959, three years after Brady's discharge.

24. *International Association of Machinists v. Gonzales,* 356 U. S. 617 (1957); *United Construction Workers v. Laburnum,* 347 U. S. 656 (1954).